

219. The Commission's current procedures for addressing petitions for study area waiver require the Wireline Competition Bureau to issue an order either granting or denying the request. Most petitions for study area waiver are routine in nature and are granted as filed without modification. Nevertheless, the current rules require the issuance of an order granting the request. To more efficiently and effectively process petitions for waiver of the study area freeze, we propose to streamline the process. We propose a process similar to the Bureau's processing of routine section 214 transfers of control applications.³³² The section 214 process deems the application granted, absent any further action by the Bureau, on the 31st day after the date of the public notice listing the application as accepted for filing as a streamlined application.³³³

220. We propose that upon receipt of a petition for study area waiver, a public notice shall be issued seeking comment on the petition. As is our normal practice, comments and reply comments would be due 30 and 45 days, respectively, after release of the public notice. Under this streamlined proposal, rather than the requirement for the issuance of an order granting the petition for waiver, the waiver would be deemed granted 60 days after the reply comment due date absent any further action by the Bureau. Additionally, any study area waiver related waiver requests that petitioners routinely include in petitions for study area waiver, which we routinely grant, would also be deemed granted after the 60 day period.³³⁴ Should the Bureau have concerns with any aspect of the petition for study area waiver, however, the Bureau would issue a subsequent public notice stating that the petition will not be deemed granted 60 days after the reply comment due date and is subject to further analysis and review. We seek comment on this proposal.

221. In evaluating petitions seeking a waiver of the rule freezing study area boundaries, the Commission currently applies a three-prong standard: (1) the change in study area boundaries must not adversely affect the universal service fund; (2) the state commission having regulatory authority over the transferred exchanges does not object to the transfer; and (3) the transfer must be in the public interest.³³⁵ In evaluating whether a study area boundary change will have an adverse impact on the universal service fund, the Commission historically has analyzed whether a study area waiver would result in an annual aggregate shift in an amount equal to or greater than one percent of high-cost support in the most recent calendar year.³³⁶ The Commission began applying the one-percent guideline in 1995 to limit the potential adverse impact of exchange sales on the overall fund, and partially in response to the concern that, because high-cost loop support was capped, an increase in the draw of any fund recipient necessarily

³³² 47 C.F.R. §§ 63.03-04.

³³³ 47 C.F.R. § 63.03.

³³⁴ Typically, petitions for study area waivers also include a request for waiver of section 69.3(e)(11) of the Commission's rules to include any acquired lines in the NECA pool or a request to remain an average schedule company after an acquisition of exchanges. 47 C.F.R. §§ 69.3(e)(11) and 69.605(c). Requests for waiver of section 54.305 are not routinely granted because such requests require a high degree of analysis. See *United Telephone Company of Kansas, United Telephone of Eastern Kansas, and Twin Valley Telephone, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36 of the Commission's Rules; Petition for Waiver of Section 69.3(e)(11) of the Commission's Rules, Petition for Clarification or Waiver of Section 54.305 of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 10111, 10117, n. 45 (Wireline Comp. Bur. 2006) (*United-Twin Valley Order*).

³³⁵ See, e.g., *US WEST Communications, Inc., and Eagle Telecommunications, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, AAD 94-27, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1772, para. 5 (1995) (*PTL/Eagle Order*).

³³⁶ See *id.* at 1774, paras. 14-17; see also *US WEST Communications, Inc., and Eagle Telecommunications, Inc., Joint Petition for Waiver of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, and Petition for Waiver of Section 61.41(c) of the Commission's Rules*, AAD 94-27, Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 4644 (1997).

would reduce the amounts that other LECs receive from that support fund.³³⁷ After the Commission adopted its current “parent trap” rule limiting companies that acquire lines from another company from realizing additional high-cost support, section 54.305, it continued to apply the one-percent guideline to determine the impact on the universal service fund in light of the adoption of safety valve support and ICLS.³³⁸

222. At the time the one-percent guideline was implemented in 1995, the Universal Service Fund consisted of high-cost loop support for incumbent LECs.³³⁹ The annual aggregate high-cost loop support at the time of the establishment of the one-percent guideline was approximately \$745 million.³⁴⁰ The threshold for determining an adverse impact at that time, therefore, was approximately \$7.45 million. Subsequently, the Telecommunications Act of 1996 directed the Commission to make universal service support explicit, rather than implicitly included in interstate access rates.³⁴¹ As a result, over the next few years the Commission created universal service high-cost support mechanisms for local switching, interstate common line access, and interstate access.³⁴²

223. The expansion of universal service high-cost support to include additional mechanisms, pursuant to the 1996 Act, significantly increased the base from which the one-percent guideline is applied with respect to determining whether a study area waiver would result in an adverse effect on the fund. Currently, annual aggregate high-cost support for all mechanisms is approximately \$4.3 billion.³⁴³ One-percent of \$4.3 billion is \$43 million. The study area waiver with the greatest estimated impact on universal service support in the past several years was the *United-Twin Valley Order* where the estimated increase in support was \$800,000 or only approximately 2% of the current \$43 million one-percent threshold.³⁴⁴

224. Continuing to apply the one-percent guideline in this manner is unlikely to shed any insight on whether a study area waiver should be granted. It is implausible that any study area waiver could exceed the one-percent of aggregate universal service support.³⁴⁵ Moreover, the cumulative impact

³³⁷ See *PTI/Eagle Order*, 10 FCC Rcd at 1773, para. 13.

³³⁸ See *infra* note 346.

³³⁹ See *PTI/Eagle Order*, 10 FCC Rcd at 1773, para. 17; 47 C.F.R. § 36.601-631. Although dial equipment minute (DEM) weighting and other implicit support flows were present in the Commission’s rules at the time, only high-cost loop support was considered for the purposes of the one-percent rule.

³⁴⁰ See Universal Service Fund 1997 Submission of 1996 Study Results by the National Exchange Carrier Association, Tab 11, page 225 (October 1, 1997). This filing included five years of historical data. High-cost loop payments for 1995 were based on 1993 cost and loop data.

³⁴¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the 1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq.* 47 U.S.C. § 254(e) (“Any such [universal service] support should be explicit and sufficient to achieve the purposes of this section.”).

³⁴² 47 C.F.R. §§ 54.301, 54.901-904, and 54.800-809. Forward-looking high-cost model support was also implemented to provide support to non-rural incumbent LECs, however, but not as a result of the statute’s requirement that all support be explicit. 47 C.F.R. § 54.309.

³⁴³ See USAC 2Q 2011 Filing at Appendices at HC01.

³⁴⁴ See *United Telephone Company of Kansas, United Telephone of Eastern Kansas, and Twin Valley Telephone, Inc., Joint Petition for Waiver of the Definition of “Study Area” Contained in Part 36 of the Commission’s Rules; Petition for Waiver of Section 69.3(e)(11) of the Commission’s Rules, Petition for Clarification or Waiver of Section 54.305 of the Commission’s Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 10111 (Wireline Comp. Bur. 2006) (*United-Twin Valley Order*).

³⁴⁵ Historically, rural incumbent LECs have been the buyers of telephone exchanges from non-rural incumbent LECs in most study area waiver transactions. Currently, the greatest amount of support any one rural incumbent LEC receives is \$39 million. See Universal Service Administrative Company, Federal Universal Service Support (continued....)

on the Fund of granting a series of waivers that each individually had slightly less than a one percent impact could be significant. We therefore propose to eliminate the one-percent guideline as a measure of evaluating whether a study area waiver will have an adverse impact on the universal service fund. Instead, we propose to focus our evaluation on the public interest benefits of the proposed study area waiver including: (1) the number of lines at issue; (2) the projected universal service fund cost per line; and, (3) whether such a grant would result in consolidation of study areas that facilitates reductions in cost by taking advantage of the economies of scale, i.e., reduction in cost per line due to the increased number of lines. We seek comment on this proposal.

2. Revising the “Parent Trap” Rule, Section 54.305

225. Section 54.305(b) of the Commission’s rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost universal service support for which the acquired exchanges were eligible prior to their transfer.³⁴⁶ The Commission adopted section 54.305 to discourage a carrier from placing unreasonable reliance upon potential universal service support in deciding whether to purchase exchanges or merely to increase its share of high-cost universal service support.³⁴⁷

226. To encourage carriers subject to the requirements of section 54.305 of the Commission’s rules to invest in modern communications networks in unserved areas, we propose to eliminate immediately the applicability of section 54.305 in those instances when the study area waiver order was adopted five or more years ago and when a certain minimum percentage of the acquired lines, e.g., 30%, are unserved by 768 kbps broadband, as indicated on NTIA’s broadband map and/or our Form 477 data collection. For those carriers subject to the requirements of section 54.305 where the implementing order (Continued from previous page)

Mechanism, Fund Size Projection for the First Quarter 2011, Table HC01 (Nov. 2, 2010). It is highly improbable that any study area waiver transaction could cause an increase in universal service support approaching the current \$43 million threshold given that the rural incumbent LEC receiving the greatest amount of annual support receives less than \$43 million. Further, section 54.305 of the Commission’s rules currently limits high-cost loop support and local switching support for the acquired exchanges to the same per-line support levels for which the exchanges were eligible prior to their transfer. See 47 C.F.R. § 54.305.

³⁴⁶ 47 C.F.R. § 54.305(b). This rule applies to high-cost loop support and local switching support. A carrier’s acquired exchanges, however, may receive additional support pursuant to the Commission’s “safety valve” mechanism for additional significant investments. See 47 C.F.R. § 54.305(d)-(f). Since 2005, safety valve support has ranged from an annual low of \$700,000 to a projected high of \$6.2 million for 2011. See 2010 Universal Service Monitoring Report at Table 3.8; USAC 2Q 2011 Filing, Appendices at HC01. A carrier acquiring exchanges also may be eligible to receive ICLS, which is not subject to the limitations set forth in section 54.305(b). See 47 C.F.R. § 54.902.

³⁴⁷ See *Universal Service First Report and Order*, 12 FCC Rcd at 8942-43. Prior to the adoption of section 54.305 of the Commission’s rules, the Common Carrier Bureau had approved several study area waivers relying on purported minimal increases in universal service support, and later the acquiring carriers subsequently received significant increases in universal service support. For example, in 1990 the Bureau approved a study area waiver in order to permit Delta Telephone Company (Delta) to change its study area boundaries in conjunction with its acquisition of Sherwood Telephone Company (Sherwood). Delta stated in its petition for waiver that it did not currently receive universal service support while Sherwood only received \$468 for 1989, and Delta stated that the acquisition would not skew high cost support in Delta’s favor. The Bureau concluded that the merging of the two carriers could not have a substantial impact on the high cost support program. After completion of the merger, Delta’s support grew from \$83,000 in 1991 to \$397,000 in 1993. See *Delta Telephone Company, Waiver of the Definition of “Study Area” contained in Part 36, Appendix-Glossary, of the Commission’s Rules*, AAD 90-20, Memorandum Opinion and Order, 5 FCC Rcd 7100 (Com. Car. Bur. 1990). In another example, in the US West and Gila River Telecommunications, Inc. (Gila River) study area waiver proceeding, Gila River’s high-cost support escalated from \$169,000 to \$492,000 from 1992 to 1993. See *US West Communications and Gila River Telecommunications, Inc., Joint Petition for Waiver of the Definition of “Study Area” contained in Part 36, Appendix-Glossary, of the Commission’s Rules*, AAD 91-2, Memorandum Opinion and Order, 7 FCC Rcd 2161 (Com. Car. Bur. 1992).

was adopted less than five years ago, we propose to eliminate the applicability of section 54.305 five years after the adoption of the implementing order, if a specified minimum percentage of housing units in the service area are unserved by broadband. What would be the appropriate trigger for elimination of the parent trap rule in this instance? For study area waivers granted subsequent to this order, we propose that the requirements of section 54.305 expire five years after the adoption of the related study area waiver order and if the area has the minimum designated percentage of unserved housing units by broadband. We propose that safety valve support will continue to be available while the requirements of section 54.305 are in force.³⁴⁸ However, if the applicability of section 54.305 is eliminated for any carrier, that carrier would no longer eligible for safety valve support.

227. We seek comment on this proposal, including an appropriate minimum percentage of unserved households. We recognize that these proposals essentially trade the opportunity for some incumbent LECs to increase their universal service support in exchange for the potential efficiency benefits of consolidation, i.e., some carriers, by increasing efficiencies due to consolidation may reduce total company costs and increase net income, while reducing the need for universal service support.³⁴⁹ We specifically seek comment regarding whether these efficiency benefits are likely to be sufficient to outweigh the potential loss in universal service support. Finally, we note that some rural incumbent LECs receive support pursuant to section 54.305 that would otherwise not receive any support or would receive lesser support based upon their own costs.³⁵⁰ We seek comment on modifying section 54.305 to eliminate this unintended consequence. Specifically, seek comment on revising section 54.305 so that rural incumbent LECs, subject to section 54.305 of the Commission's rules, would receive either the lesser of the support pursuant to section 54.305 or the support based on their own actual costs.

C. Transitioning IAS to CAF

228. We seek comment on transitioning amounts from Interstate Access Support for price cap carriers to the CAF beginning in 2012, over a period of a few years.³⁵¹ We also seek comment on transitioning amounts from IAS for competitive ETCs to the CAF on the same schedule as proposed for price cap carriers.³⁵²

1. Background

229. IAS is a high-cost program that historically has supported a portion of the local loop, the facility to the end user that delivers both interstate and intrastate services. It acts to reduce the amount of revenues that price cap carriers need to recover from end users and other carriers to meet their allowable interstate revenues.³⁵³ It was expressly designed to keep regulated voice rates affordable.

³⁴⁸ See *supra* note 346.

³⁴⁹ The existing cap on total high-cost loop support for rural carriers would continue to apply.

³⁵⁰ Staff analysis of NECA 2010 USF Data Filing and USAC 2Q 2011 Filing. See *supra* para. 286.

³⁵¹ See Appendix A, section 54.807.

³⁵² See *id.*

³⁵³ Price cap regulation focuses primarily on rates incumbent LECs may charge and the revenues they may generate from interstate access services. See *LEC Price Cap Order*, 5 FCC Rcd at 6787, para. 2. The price cap system was intended to create incentives for LECs to reduce costs and improve productivity while maintaining affordable rates for consumers through caps on prices. *Id.* Although initial price cap rates were set equal to the rates LECs were charging under rate-of-return regulation, the rates of price cap LECs have been limited ever since by price indices that have been adjusted annually pursuant to formulas set forth in the Commission's Part 61 rules. See *Access Charge Reform, Price Cap Performance Review, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-262, 94-1, 99-249, and 96-45, Order on Remand, 18 FCC Rcd 14976, 14978, para. 4 (2003) (*CALLS Remand Order*).

230. The Commission created IAS as part of the May 2000 *CALLS Order*, a five-year transitional interstate access and universal service reform plan for price cap carriers.³⁵⁴ The *CALLS Order* lowered interstate common line access rates and replaced the reduced revenues with increased subscriber line charges and IAS.³⁵⁵ The Commission initially sized IAS in 2000 at \$650 million annually, to offset the reductions in the interstate access charges of price cap carriers.³⁵⁶ In 2003, the Commission, on remand, further explained why \$650 million was the appropriate size of the mechanism.³⁵⁷ The Commission specifically noted that it could adjust the amount of IAS upward or downward, as warranted, at the end of the five-year transition period adopted in the *CALLS Order*.³⁵⁸ At the end of the five-year period, however, the Commission did not take further action to re-examine whether this was an appropriate level of IAS.

231. In the 2008 *Interim Cap Order*, the Commission capped IAS for incumbent LECs at the amount incumbent LECs were eligible to receive in March 2008, indexed to line growth or loss by incumbent LECs, and separately capped IAS for competitive ETCs at the amount they were eligible to receive in March 2008.³⁵⁹ In 2010, incumbent price cap carriers received IAS disbursements totaling \$458 million for serving 187 study areas, while competitive ETCs received IAS disbursements totaling \$88 million.³⁶⁰ The three largest recipients of IAS for incumbents at the holding company level received a total of \$307 million.³⁶¹ The average amount of IAS disbursed to incumbent carriers in 2010 was \$0.44 per eligible line per month.³⁶²

232. In the *USF Reform NOI and NPRM*, the Commission sought comment on the National Broadband Plan recommendation to eliminate IAS, and the timeline for doing so.³⁶³ Although many commenters supported the elimination of the IAS mechanism,³⁶⁴ several argued that IAS should not be eliminated without a reasoned basis and adequate replacement of revenues.³⁶⁵ No commenter, however,

³⁵⁴ *CALLS Order*, 15 FCC Rcd. at 12964, para. 1.

³⁵⁵ *Id.* at 12974-75, para. 30.

³⁵⁶ *Id.* at 13046, para. 202; see *TOPUC*, 265 F.3d at 327-28. The Commission found \$650 million to be a reasonable amount that would provide sufficient, but not excessive, support. *CALLS Order*, 15 FCC Rcd at 13046, para. 202. It observed that a range of funding levels might be deemed “sufficient” for the purposes of the 1996 Act, and that “identifying an amount of implicit support in our interstate access charge system is an imprecise exercise.” *Id.* at 13046, para. 201 (“The various implicit support flows (e.g., business to residential, high-volume to low-volume, and geographic rate averaging) are not easily severable and quantifiable. Moreover, the competitive pricing pressures present during this transitional period between monopoly and competition present additional complexities in identifying a specific amount of implicit support.”).

³⁵⁷ *CALLS Remand Order*, 18 FCC Rcd at 14983-96, paras. 13-33.

³⁵⁸ *Id.* at 14995, para. 31.

³⁵⁹ *High -Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008) (*Interim Cap Order*).

³⁶⁰ 2010 Disbursement Analysis (forthcoming); USAC High-Cost Disbursement Tool. This amount does not include any IAS amounts going to competitive ETCs that are affiliated with wireline incumbent carriers. It also does not include any frozen Interstate Common Line support received by carriers serving 105 study areas that have converted to price cap regulation since the adoption of the *CALLS Order*.

³⁶¹ See *id.* These numbers do not include support received by competitive ETC affiliates of price cap carriers.

³⁶² See *id.* We note that the Commission’s IAS formula does not provide support to all eligible lines.

³⁶³ *USF Reform NOI/NPRM*, 25 FCC Rcd at 6680-81, paras. 57-58.

³⁶⁴ Comments of Missouri Public Service Commission, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 7 (filed July 9, 2010); NCTA July 12, 2010 Comments at 13.

³⁶⁵ See, e.g., AT&T July 12, 2010 Comments 22-23; USTA July 12, 2010 Comments at 16-17; Windstream July 12, 2010 Comments at 38-40.

including those commenters arguing against IAS's elimination, provided data or analysis demonstrating that IAS continues to be necessary to address its original intended purpose of maintaining affordable voice service, or that IAS is an efficient, effective, or accountable mechanism for advancing broadband in high-cost areas of America.³⁶⁶

2. Discussion

233. As noted above, IAS was a component of the transitional CALLS Plan, which has lasted long past its intended five-year lifespan. Although several commenters argue generally that the Commission should designate successor funding sources,³⁶⁷ they have not established in the record that such support is needed to ensure the provision of voice service at reasonable rates. Commenters have failed to provide specific information identifying particular geographic areas in which people would no longer have access to voice capability at affordable and reasonably comparable rates as a result of this proposed rule change and/or quantifying the extent of potential rate impact on consumers if IAS were eliminated. Moreover, in its current form, IAS is not focused on broadband, recipients are not required to use the funding to deploy broadband, and there is no mechanism to ensure that funds in fact are used to build broadband in unserved areas. IAS was designed to be a complement to price cap carriers' interstate end-user rates and other access charges, and provides a source of revenues for price cap carriers serving voice customers, but not broadband-only customers. As a result, IAS does not appear necessary to provide voice service at affordable and reasonably comparable rates and does not appear to be effectively structured to promote broadband deployment. We therefore propose to transition IAS to the CAF, where funding can be better targeted to areas requiring additional investment to support modern communications networks that provide voice and broadband service. We note that current IAS recipients would be eligible to compete for CAF support pursuant to the rules proposed below.³⁶⁸ Alternatively, should such funding be used to reduce the size of the Fund? If so, how would that impact our near-term and long-term goals for reform?

234. *Incumbent ETCs.* Building on the record developed in the *USF Reform NOI/NPRM*, we now propose to transition IAS to the CAF over a period of a few years, beginning in 2012. Specifically, we seek comment on whether the IAS funding level for incumbent carriers adopted in the *Interim Cap Order* should be capped in 2012 at 50 percent of the 2011 IAS cap amount and then eliminated in 2013, or whether it should be transitioned to the CAF more gradually to help further minimize disruption to service providers. Alternatively, we seek comment on whether the transition should be accomplished more slowly for certain types of recipients (e.g., mid-sized carriers). We also note that below we seek comment on potential intercarrier compensation revenue recovery from the federal universal service fund, subject to meeting certain standards.³⁶⁹

235. We seek comment on the specific timeframe for implementing the elimination of the IAS rules and any associated changes to the Commission's pricing rules. What is a reasonable transition for price cap carriers to operationalize any changes necessary to address the IAS reduction? Would the appropriate transition period differ in the event that price cap carriers replace the IAS revenue, in whole or in part, with revenues from other sources, such as SLCs or other access rates? Should the Commission consider transitioning IAS more rapidly, for instance in a single year? If so, what would the consequences be of doing so and would the benefits of freeing additional funding in the near term for the CAF outweigh any potential negative consequences? We also seek comment on whether additional rule

³⁶⁶ See AT&T July 12, 2010 Comments 22-23; USTA July 12, 2010 Comments at 16-17; Windstream July 12, 2010 Comments at 38-40.

³⁶⁷ See AT&T July 12, 2010 Comments 22-23; USTA July 12, 2010 Comments at 16-17; Windstream July 12, 2010 Comments at 38-40.

³⁶⁸ See *infra* Section VII.

³⁶⁹ See *infra* Section XIV.

changes must be made to implement this proposal, and ask that commenters identify the specific changes that should be made. For example, a price cap carrier typically would be permitted to make an exogenous adjustment to its price cap indices (which are used to set access rates including SLCs) when a regulatory change materially affects its ability to recover its permitted revenues. We seek comment regarding whether there is any basis under the Commission's price cap rules for concluding that an exogenous adjustment should not be permitted due to the transitional reduction in IAS. Are there any showings, in addition to the loss of IAS, that a price cap carrier should be required to make in order to be permitted an exogenous adjustment? For example, should a price cap carrier be required to show that it has not realized productivity gains since the introduction of the CALLS plan sufficient to offset any corresponding loss of IAS in the future?

236. To the extent an exogenous adjustment to price cap indices is permitted, we seek comment on the ramifications under our existing rules and in light of our proposals for intercarrier compensation reform set forth more fully below.³⁷⁰ We also seek comment on whether the Commission should adopt a productivity factor or other adjustment to the X-factor that could be targeted to partially or wholly offset exogenous adjustments associated with the transition of IAS.³⁷¹ We note that price cap regulation schemes typically provide some mechanism for sharing the benefits of productivity gains with ratepayers.³⁷² Prior to the *CALLS Order*, the Commission included a productivity adjustment to the price cap indices to ensure that such savings would be shared.³⁷³ The *CALLS Order* did not include a productivity-related adjustment, providing instead a transitional X-factor designed simply to targeted lower rates.³⁷⁴ Although not a productivity adjustment, this transitional X-factor provided some consumer benefit to the extent it achieved lower targeted rates. After the targeted rates were achieved, however, the X-factor was set equal to inflation and provided no additional consumer benefit, productivity-related or otherwise.³⁷⁵ As with the IAS mechanism, the X-factor adopted in the *CALLS Order* was a transitional part of the five-year CALLS plan. We seek comment regarding whether a productivity factor or similar

³⁷⁰ To the extent that a price cap carrier could not recover its allowable revenues through SLCs and IAS, the *CALLS Order* permitted price cap carriers to recover the remainder of its allowable revenues through two charges paid by interexchange carriers: the multiline business presubscribed interexchange carrier charge (MLB PICC)—a flat per-line charge assessed on the interexchange carrier to whom the customer is presubscribed, and the carrier common line (CCL) charge—a per-minute charge assessed on interstate interexchange traffic. The Commission capped the MLB PICC at \$4.31 per line per month and permitted recovery of the CCL charge only to the extent that a price cap carrier could not recover its allowable revenues through SLCs, IAS, and MLB PICCs.

³⁷¹ We note that past price cap performance reviews have, in addition to raising the productivity factor, reduced the price cap index to reflect that productivity increases had been higher than the productivity factor in the previous period. See *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, First Report and Order, 10 FCC Rcd 8961, 9053-54, para. 209 (1995); *Price Cap Performance Review for Local Exchange Carriers*, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, 12 FCC Rcd 16642, 16645, para. 1 (1997).

³⁷² David E.M. Sappington, *Price Regulation*, in *Handbook of Telecommunications Economics*, Vol. I 225, 231, 248-53 (Martin E. Cave et al. eds., 2002).

³⁷³ See *CALLS Remand Order*, 18 FCC Rcd at 14997-98, para. 35.

³⁷⁴ *CALLS Order*, 15 FCC Rcd at 13028-29, paras. 160-63.

³⁷⁵ See *id.*, 15 FCC Rcd at 13028-29, paras. 160-63. Because price cap carriers reached their target rates at different times, the inflation-only X-factor took effect at different times for different price cap carriers. In the *CALLS Remand Order*, the Commission concluded that price cap carriers serving 36 percent of total nationwide price cap access lines had achieved their target rates by their 2000 annual access filing. *CALLS Remand Order*, 18 FCC Rcd at 15002, para. 43, 15010-13, App. B. By the 2001 annual accessing filings the number grew to carriers serving 75 percent of total access lines, and by the 2002 annual access filings, carriers serving 96 percent of total access lines had achieved their target rates. *Id.* As a result, price cap carriers serving nearly all price cap access lines have had no reductions to their price cap indices, productivity-related or otherwise, since 2002, and some price cap carriers have had no reductions in ten years.

adjustment is an appropriate part of the post-CALLS plan access rate structure. If so, how should the productivity factor be determined? We request that commenters provide detailed analysis supported with specific data, if available to them, or identify data that would be necessary to support the analysis, if the data is not available to them. We also invite commenters to submit alternative proposals or analyses regarding the consequences of IAS phase out.

237. *Competitive ETCs.* We propose to transition IAS for competitive ETCs on the same schedule adopted for incumbent price cap carriers.³⁷⁶ We note that the Commission's IAS rules were designed initially to provide incumbents and competitive ETCs with the same per-line level of support.³⁷⁷ Although the Commission's actions in the *Interim Cap Order* – subjecting IAS to separate caps for incumbent price cap carriers and competitive ETCs and capping high-cost universal service support for competitive ETCs generally – to some extent disrupted the identical support relationship, it is difficult to justify continuing to provide this type of support to competitive ETCs when it no longer exists for incumbent carriers. In addition, the calculation of IAS for competitive ETCs depends significantly on data filed by incumbent recipients of IAS.³⁷⁸ As a practical matter, it is likely to be administratively difficult to continue to provide IAS to competitive ETCs without the continuing participation of incumbent price cap carriers. We seek comment on this proposal.

238. *Redirecting IAS to Broadband.* Carriers receiving IAS today are not required to use such funding to deploy broadband-capable networks; however, in some instances it may be a significant source of revenue for carriers that have ongoing broadband deployment plans. Moreover, we recognize that in some states, a significant portion of high-cost support is IAS. We seek comment on designing the CAF in a way that enables support associated with the IAS phase down for incumbent carriers to be reserved for the same state in the CAF mechanism. In other words, under this alternative, any state whose carriers receive IAS now would receive at least the same amount of CAF support in the future. The CAF support would otherwise be subject to all other rules and obligations associated with the CAF, and there would be no guarantee that the same carrier that received IAS would receive CAF. We seek comment on this proposal.

239. *Legal Authority.* We believe the Commission has authority to transition IAS for both incumbents and competitive ETCs as part of the broader transition of moving all support to the CAF. The Commission generally has authority to establish a transition plan in a manner that will minimize market disruptions.³⁷⁹ Federal courts have consistently “deferred to the Commission’s decisions to enact interim rules based on its predictive judgment that such rules were necessary to preserve universal service,”³⁸⁰ and have specifically deferred “to the agency’s reasonable judgment about what will constitute ‘sufficient’ support during the transition period from one universal service system to another.”³⁸¹ We seek comment on this issue.

240. We do not believe that transitioning these forms of support would implicate the Fifth Amendment’s Takings Clause. When Congress creates a benefit program, it is free to alter or eliminate

³⁷⁶ Below, we also seek comment on transitioning all competitive ETC support received pursuant to the identical support rule to the CAF. See *infra* Section VI.D.

³⁷⁷ See 47 C.F.R. §54.807.

³⁷⁸ See generally 47 C.F.R. §§ 54.800-807.

³⁷⁹ See, e.g., *Rural Cellular*, 588 F.3d at 1105-06; *Competitive Telecommunications Ass’n v. FCC*, 309 F.3d 8, 14 (D.C. Cir. 2002); *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 410 (D.C. Cir. 2002); *Alenco*, 201 F.3d at 616; *TOPUC*, 183 F.3d at 437; *Competitive Telecommunications Ass’n v. FCC*, 117 F.3d 1068, 1073-75 (8th Cir. 1997); *MCI Telecommunications Corp. v. FCC*, 750 F.2d 135, 141 (D.C. Cir. 1984).

³⁸⁰ *Rural Cellular*, 588 F.3d at 1106; see also *Competitive Telecommunications Ass’n*, 309 F.3d at 14-15; *Alenco*, 201 F.3d at 616, 620-22; *Southwestern Bell Tel Co. v. FCC*, 153 F.3d 523, 537-39, 549-50 (8th Cir. 1998).

³⁸¹ *TOPUC*, 183 F.3d at 437.

that program without running afoul of the Takings Clause.³⁸² “The Fifth Amendment protects against takings; it does not confer a constitutional right to government-subsidized profits.”³⁸³ Section 254 does not expressly or impliedly provide that particular companies are entitled to ongoing USF support.³⁸⁴ Carriers designated as ETCs pursuant to section 214(e) are “eligible” for support, not entitled to it, and we are not aware of any other law that would give particular companies a reasonable investment-backed expectation of entitlement to ongoing support.³⁸⁵ The purpose of universal service is to benefit the consumer, not the carrier.³⁸⁶ For these reasons, we do not believe the Commission would have a constitutional obligation to compensate carriers that lose support as a result of our proposed reforms. We invite comment on this issue.

D. Rationalizing Competitive ETC Support Through Elimination of the Identical Support Rule

241. Mobile voice and mobile broadband services are playing an increasingly prominent role in modern telecommunications. Given the important benefits of and the strong consumer demand for mobile services, ubiquitous mobile coverage must be a national priority. Yet there remain many areas of the country where people live, work, and travel that lack mobile voice coverage, and still larger geographic areas that lack current generation mobile broadband coverage. For this reason, funding for mobile networks must be more efficiently deployed than it is today. At the same time, we recognize that funding mobile coverage in unserved areas through universal service programs must be balanced with other priorities, including controlling the size of the universal service fund and the resulting burden on American consumers and businesses, and the need for high-bandwidth fixed broadband networks that both provide unique capabilities in themselves and may provide necessary infrastructure for mobile networks.

242. In this section, we seek comment on two high-level approaches to rationalizing funding for competitive ETCs (which are mainly mobile providers). Both approaches involve eliminating the existing identical support rule, which we believe fails to efficiently promote deployment of mobile voice services, much less fixed or mobile broadband. First, we seek comment on redirecting all available competitive ETC funding, over five years, to CAF for redistribution through new market-driven funding mechanisms to provide support for mobile and fixed broadband.³⁸⁷ Second, we seek comment on generally redirecting available competitive ETC support to CAF to be distributed through such new mechanisms over five years, but allowing individual mobile providers to demonstrate that some level of continuing support under the current high-cost program is necessary, on a transitional basis, to achieve universal service goals in areas that would otherwise be unserved by mobile voice and/or broadband.

³⁸² See, e.g., *Bowen v. Gilliard*, 483 U.S. 587, 604 (1987) (“Congress is not, by virtue of having instituted a social welfare program, bound to continue it at all, much less at the same benefit level.”); *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211, 225 (1986); *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166, 174 (1980) (reducing retirement benefits did not violate the Takings Clause, “since railroad benefits, like social security benefits, are not contractual and may be altered or even eliminated at any time”).

³⁸³ *Alenco*, 201 F.3d at 624.

³⁸⁴ See *id.* at 620 (“The Act does *not* guarantee all local telephone service providers a sufficient return on investment; quite the contrary, it is intended to introduce competition into the market.”).

³⁸⁵ See *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972) (to have a property interest in a benefit provided by the government, “a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.”).

³⁸⁶ *Rural Cellular*, 588 F.3d at 1103; *Alenco*, 201 F.3d at 621.

³⁸⁷ As described in the *Mobility Fund NPRM*, the Commission has proposed using a portion of competitive ETC funding already relinquished by Verizon Wireless and Sprint for the Mobility Fund. See *Mobility Fund NPRM*, 25 FCC Rcd 14716.

Under either approach, we also seek comment on a variety of implementation issues and other possible exceptions, such as for Tribal lands and Alaska Native regions.

1. Background

243. Section 54.307 of the Commission's rules, also known as the "identical support rule," provides competitive ETCs the same per-line amount of high-cost universal service support as the incumbent local exchange carrier serving the same area.³⁸⁸ In the 2008 *Interim Cap Order*, the Commission concluded that rapid growth in support to competitive ETCs as a result of the identical support rule threatened the sustainability of the universal service fund.³⁸⁹ Further, it found that providing the same per-line support amount to competitive ETCs had the consequence of encouraging wireless competitive ETCs to supplement or duplicate existing services while offering little incentive to maintain, or expand, investment in unserved or underserved areas.³⁹⁰ As a consequence, the Commission adopted an interim state-by-state cap on high-cost support for competitive ETCs, pending comprehensive high-cost universal service reform.³⁹¹

244. The interim cap for competitive ETCs is \$1.36 billion.³⁹² In 2010, 446 competitive ETCs, owned by 212 holding companies, received funding under the identical support rule.³⁹³ Aside from Verizon Wireless, which previously agreed to give up competitive ETC high-cost support through merger commitments (as did Sprint), the largest competitive ETC recipient by holding company in 2010 was AT&T, which received \$289 million.³⁹⁴ On average, competitive ETCs received approximately \$2.65 per supported line per month, compared to an average of \$3.35 per supported line per month for incumbents.³⁹⁵

³⁸⁸ 47 C.F.R. § 54.307. In adopting the identical support rule, the Commission assumed that competitive ETCs would be competitive LECs (i.e., wireline telephone providers) competing directly with incumbent LECs for particular customers. See *Universal Service First Report and Order*, 12 FCC Rcd at 8932, para. 286. Based on this assumption, the Commission concluded that high-cost support should be portable – i.e., that support would follow the customer to the new LEC when the customer switched service providers. *Id.* at 8932-33, paras. 287-88. The Commission planned that eventually all support would be provided based on forward-looking economic cost estimates and not based on the incumbents' embedded costs. *Id.* at 8932, paras. 287. The Commission did not contemplate the growing role that mobile service would play as a supplement to landline telephony.

³⁸⁹ *Interim Cap Order*, 23 FCC Rcd at 8837-40, paras. 6-11. As the Commission noted, from 2001 through 2007, support for competitive ETCs grew from under \$17 million to \$1.18 billion. *Id.* at 8837-38, para. 6.

³⁹⁰ *Id.* at 8843-44, paras. 20-21.

³⁹¹ *Id.* at 8837, para. 5. Specifically, the Commission capped support for competitive ETCs in each state at the total amount of support for which all competitive ETCs serving the state were eligible to receive in March 2008, annualized. *Id.* at 8846, paras. 26-28. The *Interim Cap Order* included exceptions for competitive ETCs serving lands and for competitive ETCs submitting cost studies demonstrating their own high costs of providing service. *Id.* at 8848-49, paras. 31-33.

³⁹² See *Interim Cap Adjustment Letter*.

³⁹³ 2010 Disbursement Analysis (forthcoming); USAC High-Cost Disbursement Tool. These amounts include disbursements to Verizon Wireless and Sprint that USAC now is in the process of reclaiming pursuant to the *Corr Wireless Order*. *Corr Wireless Order*, 25 FCC Rcd at 12859-63, paras. 14-22. We note that actual competitive ETC disbursements may vary from the interim cap amount for two reasons. First, true-ups and other out-of-period adjustments sometimes result in disbursements in a year other than the one against the payments apply for interim cap purposes. Second, some states have seen a reduction in demand for competitive ETC support since the cap was established and, as a result, total support is less than the interim cap amount.

³⁹⁴ 2010 Disbursement Analysis (forthcoming); USAC High-Cost Disbursement Tool. Competitive ETCs affiliated with another large wireless carrier, T-Mobile, received \$30.3 million in 2010. *Id.*

³⁹⁵ *Id.* This per-line amount includes competitive ETC support received by Sprint and Verizon Wireless. Excluding Sprint and Verizon Wireless, competitive ETCs received \$4.65 per supported line per month. *Id.*

245. In the *USF Reform NOI/NPRM*, the Commission sought comment on the National Broadband Plan recommendation to eliminate high-cost support for competitive ETCs over a five-year period.³⁹⁶ Many commenters supported the proposal,³⁹⁷ while others indicated that it would be difficult to address the issue without more information regarding the Commission's proposal for the CAF.³⁹⁸ Still others argued that competitive ETC support should not be eliminated, in some instances arguing that they use such support to extend mobile coverage in areas that they otherwise would not serve.³⁹⁹ These commenters, however, did not provide specific data or analysis sufficient for the Commission to draw any particular conclusion regarding the role of competitive ETC support in advancing universal service.⁴⁰⁰

2. Discussion

246. As noted above, in 2008, the Commission concluded that the identical support rule offers limited and only indirect incentive to invest in unserved and underserved areas.⁴⁰¹ A significant amount of high-cost support is provided, for example, to competitive ETCs providing duplicative services. State processes to hold competitive ETCs accountable for productive use of funding vary from state to state.⁴⁰² We estimate that for nearly nine percent of the country's population, universal service is subsidizing two or more competitors (not including Verizon Wireless or Sprint) in a given geographic area, in addition to an incumbent.⁴⁰³ In 2010, portions of 46 incumbent study areas (out of 1442 incumbent study areas nationwide) received service from three or four competitive ETCs (not including Verizon Wireless or Sprint) and portions of 237 incumbent study areas received service from 2 or more competitive ETCs.⁴⁰⁴ Many of these incumbent study areas were additionally served by other competitive carriers that received no high-cost support.⁴⁰⁵ In addition, because high-cost support is not based on competitive ETCs' costs,

³⁹⁶ *USF Reform NOI and NPRM*, 25 FCC Rcd at 6681-82, paras. 60-61.

³⁹⁷ Comments of Alexicon Telecommunications Consulting, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 6-7 (filed July 12, 2010); CWA July 12, 2010 Comments at 4; Comments of Indiana Utility Regulatory Commission WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 4 (filed July 12, 2010); Missouri PSC July 9, 2010 Comments at 8; NASUCA July 12, 2010 Comments at 15-18; USTA July 12, 2010 Comments at 14-16; Windstream July 12, 2010 Comments at 26-33.

³⁹⁸ AT&T July 12, 2010 Comments at 23; CTIA July 12, 2010 Comments at 6-9.

³⁹⁹ Comments of Rural Telecommunications Group, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 15-16 (filed July 12, 2010); Comments of Rural Independent Competition Alliance (RICA), WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 11-13 (filed July 12, 2010).

⁴⁰⁰ See, e.g., Rural Telecommunications Group July 12, 2010 Comments at 15-16; RICA July 12, 2010 Comments at 11-13.

⁴⁰¹ *Interim Cap Order*, 23 FCC Rcd at 8843-44, paras. 20-21.

⁴⁰² See Jing Liu & Edwin Rosenberg, *State Universal Service Funding Mechanisms: Results of the NRRI's 2005-2006 Survey* at 43 & tbl. 26 (NRRI, Working Paper No. 06-09, 2006), available at <http://nrri.org/pubs/telecommunications/06-09.pdf>. For instance, in Maine, applicants seeking competitive ETC designation must file a plan describing with specificity, for the first two years, proposed improvements or upgrades to the applicant's network throughout the designated service area, projected start and completion date for each improvement, estimated amount of investment for each project that is funded by high cost support, specific geographic areas where improvements will be made, and the estimated population that will be served as a result of the improvements; only competitive ETCs are required to report annually on investments made with high cost support. Standards for Designating and Certifying Eligible Telecommunications Carriers Qualified to Receive Federal Universal Service Funding, 65-407-206 Me. Code R. § 3, § 6, available at <http://www.maine.gov/sos/cec/rules/65/407/407c206.doc>.

⁴⁰³ The staff analysis utilizes American Roamer data, TeleAtlas wire center boundaries, and USAC disbursement data.

⁴⁰⁴ Staff analysis of American Roamer data, Oct. 2010.

⁴⁰⁵ *Id.*

even in unserved areas, competitive ETCs may receive high per-line support amounts even though they potentially could provide affordable service with much less or even no support.⁴⁰⁶ In other instances, a competitive ETC is affiliated with an incumbent carrier that receives relatively higher amounts of support per line due to recent broadband network investment, which enables the holding company owning both to obtain higher support amounts for its wireless affiliate as well. Finally, we note that competitive ETCs may have incentives to seek designation in study areas that exhibit higher amounts of support on average than other areas.

247. To address these problems, we propose to eliminate the identical support rule, which we believe no longer adequately furthers the universal service principles in section 254(b).⁴⁰⁷ To replace it, we seek comment on two approaches to rationalizing funding for mobile networks.

248. *Redirect Available Competitive ETC Funding to CAF:* First, we seek comment on transitioning competitive ETC support to the CAF by reducing the interim cap on competitive ETCs support adopted in the *Interim Cap Order* in five equal installments, with the initial 20 percent reduction to occur in 2012.⁴⁰⁸ To the extent we do not transition such support over five years, we seek comment on whether some other timeframe better serve the Commission's universal service goals? Are there any other transition plans that the Commission should consider? Should the Commission adopt a faster timeframe for competitive ETCs that are nationwide wireless carriers and have not already committed to phase-down their high-cost support pursuant to merger conditions? If so, how would the Commission define a nationwide wireless carrier for this purpose?⁴⁰⁹

249. Under this approach, we propose that available funding from the phase down of the interim cap be redirected to the CAF for redistribution through new competitive mechanisms for providing support to both mobile and fixed broadband, as discussed in detail in section VII., below. We seek comment on whether these mechanisms would support mobile networks, especially mobile broadband networks, in a manner more consistent with our proposed overarching goals for universal service reform: modernizing for broadband; fiscal responsibility; accountability; and the use of market-

⁴⁰⁶ For example, a competitive ETC serving a service area within the territory of one of the very highest cost incumbent carriers may receive in excess of \$1,000 per line per month even though that amount is unlikely to be appropriate or related to the competitive ETC's costs of providing service. We also note that, in one instance, where support is not targeted to high-cost areas in a study area, competitive ETCs currently receive \$4.60 per line per month to serve an urban area with a highly competitive wireless market. See Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for Second Quarter 2011, filed Jan. 31, 2011, at App. HC10; *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, 25 FCC Rcd 11407, App. D (*Fourteenth CMRS Competition Report*). For discussion of proposals to further target high-cost support, see *infra* Section VI.F.

⁴⁰⁷ See App. A, section 54.305 (draft rule eliminating identical support). More than two years ago, four commissioners observed that there was a growing consensus that the identical support rule "should be eliminated." *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6903 (Joint Statement of Commissioners Copps, Adelstein, McDowell, and Tate).

⁴⁰⁸ Each year, the total cap for each state would be reduced by 20 percent of the cap during the base period. The base period would the interim cap amount as established by the *Interim Cap Order* and adjusted pursuant to the *Corr Wireless II Order*. See *Corr Wireless Order*, 25 FCC Rcd at 12854; *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 25 FCC Rcd 18146 (2010) (*Corr Wireless II Order*). We do not propose to amend our rules to reflect this process because the interim cap itself is not codified in our rules.

⁴⁰⁹ The Fourteenth Mobile Wireless Competition Report observed that "[a]s of year-end 2008, there were four facilities-based mobile wireless service providers in the United States that industry observers typically describe as 'nationwide': AT&T, Sprint Nextel, T-Mobile, and Verizon Wireless." *Fourteenth CMRS Competition Report*, 25 FCC Rcd at 11438, para. 27.

driven, incentive-based policies. We also seek comment on whether this approach would appropriately balance support for mobile services with other potentially competing universal service goals. Alternatively, should we use such funding to reduce the size of the Fund? If so, how would that impact our near-term and long-term goals for reform? We note that we have proposed that a portion of the funds already relinquished by Verizon Wireless and Sprint, apart from a more general transition of competitive ETC support, be used to support the deployment of mobile networks capable of providing broadband through the Mobility Fund.⁴¹⁰

250. *Presumptively Redirect Available Competitive ETC Funding to CAF:* In the alternative, we seek comment on presumptively reducing the interim cap, as described above, but allowing for waivers or exceptions to address those instances in which the availability of affordable mobile service in an area would be jeopardized by the transition of support to the CAF. This alternative could also include waivers for competitive ETCs that could demonstrate that continued ETC support would be required for them to build out coverage in areas presently unserved by mobile voice and/or mobile broadband.

251. To the extent commenters contend that this approach is preferable to a uniform phase down of competitive ETC support, we invite submission of detailed data and analysis to support such contentions. Specifically, we request any information that would permit the Commission to identify any areas in which consumers would not have access to mobile service as a result of a uniform transition of competitive ETC funding to the CAF and/or to quantify the extent of any rate increases that could result from a loss of competitive ETC support.

252. In addition, we seek comment regarding how to identify circumstances in which the availability of affordable mobile service would be jeopardized. The waiver option would require an affirmative showing by a competitive ETC that its costs and revenues would not permit provision of service to a particular service territory, absent continued competitive ETC support, and that no other wireless carrier served that territory. We seek comment on the specific showing that a competitive ETC would need to make under this approach. For instance, we could require that competitive ETCs file cost and revenue data, including an audited financial statement with accompanying notes, to demonstrate that they would be cash flow negative without competitive ETC support, or other documentation indicating that, without the waiver, customers in the service area would be without mobile service. We seek comment on what specific data would be necessary to support any such showing and whether this process would be administratively feasible.

253. An alternative option would be to create an exception within our rules for competitive ETCs meeting specified criteria. A carrier meeting such criteria would receive support under the exception by certifying that it met all of the criteria. We seek comment on this process. We also seek comment on what qualifications a carrier should meet for the exception to apply. For example, we might permit an exception only when a competitive ETC is not a nationwide carrier or it receives more than \$1 per line per month on the assumption that such carriers are more likely to be dependent on universal service support to maintain their operations. Similarly, exceptions might be available only in those areas in which there is only a single wireless carrier, because in other areas consumers have an alternative if a competitive ETC ceases its service. We seek comment on these proposals.

254. We also seek comment regarding how support would be calculated if a waiver is granted or an exception is applicable. One option would be to continue applying the identical support rule, on an uncapped basis, much as the interim cap exception for Tribal lands and Alaska Native regions has been implemented. Another option would be to freeze per line support as of a specific date. With regard to the date of the per-line support freeze, we note that certain proposals in this Notice, such as the proposal to target high-cost support, to phase down IAS, or to reform the support mechanisms for rate-of-return and rural carriers, would have an impact on the per-line amount. For either option, we would propose capping

⁴¹⁰ See *Mobility Fund NPRM*, 25 FCC Rcd at 14722, para. 13.

support on a carrier-specific basis, after implementation of the other reforms. We seek comment on these options.

255. Finally, we propose that any waiver or exception to the interim cap phase down would be eliminated when the long-term vision for CAF is implemented.⁴¹¹ We seek comment regarding whether that should occur over one year or a multi-year period. We seek comment regarding whether any other events would trigger the elimination of the waiver or exception.

256. *Implementation Issues:* Under either approach, we seek comment on implementation and transitional issues related to transitioning some or all competitive ETC support. How should the transition be implemented in conjunction with the proposal above to phase out IAS for competitive ETCs over a shorter period?⁴¹²

257. The National Broadband Plan suggested that the Commission could accelerate the phase down of competitive ETC support by immediately treating a wireless family plan as a single line for purposes of support calculations.⁴¹³ One commenter estimated that this could save up to \$463 million annually.⁴¹⁴ We seek comment on this proposal and specifically invite comment on how we should define a family plan if we were to adopt such a rule, and what measures would minimize efforts to evade such a rule. For instance, should we treat all residential lines with the same account holder at a single billing address as a family plan for purposes of such a rule?

258. Are there any other transitional issues that we should take into consideration? For instance, we note that, if existing competitive ETCs relinquish their ETC designations, such relinquishments could impact existing Lifeline subscribers served by such carriers. Should there be any required notification to such customers so that they have an opportunity to switch to another carrier that is an ETC? Should we mandate or permit Lifeline only-ETCs in specific circumstances?

259. *Exception to the Transition to the CAF for Tribal Lands and Alaska Native Regions.* We seek comment on GCI's proposal that, as with the interim cap, any reduction in competitive ETC support should include an exception for carriers serving Tribal lands or Alaska Native regions.⁴¹⁵ Under this proposal, all competitive ETCs on Tribal lands or in Alaska Native regions would not be subject to the interim cap phase down.⁴¹⁶ Should any exception include Hawaiian Home Lands? If commenters believe that unique circumstances on Tribal lands and in Alaska Native regions and Hawaiian Home Lands require a different approach, are there changes we should consider to the proposals for the long-term CAF and/or first phase of the CAF that would better address those unique circumstances than would creating an exception to the proposed phase out of competitive ETC support? If unique circumstances justify providing an exception, are there any additional limitations or conditions that that should apply to the exception? Should support be maintained for competitive ETCs owned, operated, or engaged in joint ventures with Tribal governments? What conditions should be imposed under such an approach, to ensure that the goals of universal service are met in areas with such low telephone penetration rates?

⁴¹¹ See *infra* Section VII (seeking comment on long term role for mobile service providers under the CAF).

⁴¹² See *supra* Section VI.C.

⁴¹³ National Broadband Plan at 148.

⁴¹⁴ See Letter from Melissa Newman, Vice Pres., Fed. Relations, Qwest Communications International, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (Feb. 4, 2010) (proposing that universal service support be limited to one handset per wireless family plan and suggesting that could yield savings of up to \$463 million annually). In comments filed in response to the *USF Reform NOI/NPRM*, CTIA opposed limiting support based on family plans. CTIA July 12, 2010 Comments, at 12.

⁴¹⁵ Comments of General Communications Inc., WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 24 (filed July 12, 2010).

⁴¹⁶ See *supra* note 4.

How should support be calculated pursuant to the exception? For instance, should support amounts per line be frozen? Commenters should provide detailed data and analysis to support their contentions.

260. *Legal Authority.* We seek comment on our legal authority to transition, to the CAF, competitive ETC support provided pursuant to the identical support rule. In section IV., above, we outline and seek comment on our legal authority to transition IAS for price cap carriers to the CAF. We believe the same analysis is applicable with respect to support provided to competitive ETCs pursuant to the identical support rule. We ask commenters also to provide comment on that analysis in this context of eliminating the identical support rule.

E. The First Phase of the Connect America Fund

261. The National Broadband Plan recommended that the Commission “create a fast-track program in CAF for providers to receive targeted funding for new broadband construction in unserved areas.”⁴¹⁷ In the *USF Reform NOI/NPRM*, we sought comment on the use of a competitive process to promote investment in rural America unserved by broadband networks. We specifically invited commenters to address the potential use of an auction proposed by a group of economists to award one-time subsidies to stimulate the deployment of broadband in discrete areas.⁴¹⁸ Building on the record developed in that proceeding, we now propose rules for awarding, through auctions, targeted non-recurring funding to support the deployment of robust fixed or mobile broadband in areas of the country that lack even basic broadband today, as determined by the forthcoming National Broadband Map and/or our Form 477 data collection (i.e., areas without broadband advertised as providing download speeds of at least 768 kbps). This first phase of implementation of the CAF will provide targeted funding that would supplement, not replace, other support provided through the high-cost program in its current form or as modified as part of the reforms proposed above. We envision conducting such an auction in 2012 and potentially again in 2014. We seek comment on the proposals presented below.

1. Legal Authority to Establish a Competitive Process for CAF

262. We believe the Commission has authority to adopt a competitive process for awarding support. In the *Universal Service First Report and Order*, the Commission agreed “with the Joint Board that competitive bidding is consistent with section 254, and comports with the intent of the 1996 Act to rely on market forces and to minimize regulation.”⁴¹⁹ We seek comment on our authority to establish a program under which non-recurring support would be provided, based on a competitive bidding system, to a single entity to deploy and provide broadband service.⁴²⁰

263. In 1997, the Commission recognized two advantages of using competitive bidding to determine high-cost universal service support. First, “a compelling reason to use competitive bidding is its potential as a market-based approach to determining universal service support, if any, for any given area.”⁴²¹ Second, “by encouraging more efficient carriers to submit bids reflecting their lower costs, another advantage of a properly structured competitive bidding system would be its ability to reduce the

⁴¹⁷ National Broadband Plan at 144.

⁴¹⁸ *USF Reform NOI/NPRM*, 25 FCC Rcd at 6674, 6678 para. 43-48.

⁴¹⁹ *Universal Service First Report and Order*, 12 FCC Rcd at 8951, para. 325.

⁴²⁰ The proposed program is designed to accelerate the deployment of broadband to areas that are unserved. Accordingly, while we propose to require these recipients to deploy and provide broadband, we assume the area already has voice telephony service (as we propose to define it herein) through the operation of our existing high cost programs. We therefore do not propose to require these recipients to provide such voice service in a given area. If, however, we ultimately do not create a broadband-only ETC designation for these recipients, or if we condition voice support on the provision of broadband, these recipients may be required to provide voice telephony service as well as broadband.

⁴²¹ *Id.* at 8948, para. 320.

amount of support needed for universal service.”⁴²² Despite these advantages, the Commission determined that the record at the time was insufficient to support adoption of a competitive bidding mechanism, in part because there likely would have been no competition in a significant number of rural, insular, or high-cost areas.⁴²³ Much has changed since then, including the advent of cable and wireless Internet, and we therefore seek comment on whether it would be appropriate at this time to test the use of a competitive process for awarding support.

264. We also believe we have authority to limit CAF support to only one provider per unserved area. Although state commissions and the Commission may designate more than one ETC per service area pursuant to section 214(e),⁴²⁴ that designation merely makes a provider eligible to receive support; it does not guarantee support. The term “eligible” is generally defined to mean “qualified to participate or be chosen.”⁴²⁵ Other provisions in section 254 demonstrate that Congress understood the difference between eligibility and entitlement.⁴²⁶

265. Finally, we believe we have broad authority to take measured steps to trial this approach during this first phase of the CAF.⁴²⁷ We recognize that if the Commission ultimately makes broadband a supported service, all ETCs would be required to offer broadband. It is not our intention, however, to create an unfunded mandate for new obligations. To the extent firms that bid for support do not receive funding to build out unserved areas, we recognize the need for a flexible approach in developing timelines for the deployment of broadband.

2. Overall Design of Phase I CAF

266. The proposed objectives for the first phase of the CAF are to make available non-recurring support⁴²⁸ for broadband in unserved areas and test the use of reverse auctions more generally as a longer-term means of disbursing ongoing CAF support. We seek comment on whether these are appropriate objectives.

267. We propose to design the first phase of the CAF to use funds efficiently to expand broadband to as many unserved housing units—that would be unlikely to be served soon or at all without public investment—as possible. We note that because of our commitment to control the overall size of the high-cost fund and our proposals to modify rather than immediately transition existing support mechanisms, funding available in the first phase of the CAF is likely to be insufficient to fund broadband deployment in all areas that currently lack even basic high speed Internet access—which, for these purposes, we propose to be 768 kbps download speed. We further note that differences in the cost to deploy broadband vary significantly among these unserved areas, and our proposed reverse auction will identify and target funding to those unserved areas that could be served at the lowest cost (i.e., the lowest

⁴²² *Id.*

⁴²³ *Id.* at 8949-50, paras. 322-24.

⁴²⁴ 47 U.S.C. § 214(e)(2), (6).

⁴²⁵ See Merriam-Webster, <http://www.merriam-webster.com/dictionary/eligible> (defining “eligible” as “qualified to participate or be chosen”) (last visited Feb. 9, 2011).

⁴²⁶ See, e.g., 47 U.S.C. §§ 254(h)(1)(A) (carriers offering services to rural health care providers “shall be entitled” to have the difference between the rates to health care providers and other customers in comparable rural areas treated as a service obligation), 254(h)(1)(B)(ii) (carriers providing services to schools and libraries “shall . . . receive reimbursement” from the universal service fund).

⁴²⁷ We note that the Commission previously implemented a pilot program to support the construction of broadband networks designed to promote access to innovative telehealth and telemedicine services in areas where the need for those services was most acute. *Rural Health Care Support Mechanism*, 21 FCC Rcd at 11111, para. 1.

⁴²⁸ Although we propose to award non-recurring support, we do not propose to require recipients of support to specify or certify that they will use the money only for capex rather than opex.

level of public support). In other words, the competition in our proposed auction would primarily be among providers seeking to serve different geographic areas rather than among providers seeking to serve the same geographic area.

268. As discussed more fully below, to maximize the reach of available funds, support would be available to, at most, one provider in any given unserved area. We propose to use a competitive process to compare all offers to provide service across the unserved areas eligible for participation in the first phase of the CAF, which should give providers incentives to seek the least support needed and enable identification of the providers that will achieve the greatest additional coverage with the limited funding available.⁴²⁹ We also seek comment on alternative methods for distributing support.

269. We propose to specify unserved areas eligible for support on a census block basis, using data compiled by NTIA pursuant to the Broadband Data Improvement Act of 2008⁴³⁰ or data from our proposed revised Form 477,⁴³¹ and to distribute support based on bidders' aggregations of census blocks.

270. We seek comment on whether we should limit eligibility for CAF support in this first phase to states that have engaged in access charge reform and/or prioritize support to states that have established high-cost universal service or other broadband support mechanisms.⁴³² Alternatively, we could decline to impose such limits and instead distribute support to any of the identified unserved census blocks nationwide.

271. We propose that providers eligible to compete for support be allowed to deploy terrestrial wireline or wireless (including using unlicensed spectrum) technologies, and to allow such firms to partner with satellite broadband providers to fill in gaps in coverage. We seek comment on requiring deployment to be complete within three years of receipt of funding and propose that the provider's obligations to serve the community would last for a defined period of time, such as five years, upon completion of the deployment.

272. We note that the unique features of satellite broadband make it difficult to treat it the same as other technologies. Generally speaking, once a satellite is launched, the incremental cost to reach a new subscriber (to the extent coverage and capacity are available) is the same whether that subscriber lives in an area that would be expensive for a terrestrial technology to serve or not. Consequently, satellites are well suited to serve housing units that are the most expensive to reach for terrestrial technologies. Planned upcoming satellite launches could provide broadband access to a significant number of currently unserved housing units. However, while satellite broadband can serve (almost) any particular unserved housing unit in an area, it does not appear that existing and expected satellite capacity will be sufficient to serve all unserved housing units in the United States over the next few years at projected usage levels.⁴³³ Because, from a universal service perspective, limited satellite capacity would be better used to provide access to the areas most expensive for terrestrial technologies to reach, we propose to allow satellite broadband providers to partner with terrestrial broadband providers that bid for

⁴²⁹ See *USF Reform NOI/NPRM*, 25 FCC Rcd at 6704, App. B, Paul Milgrom, Gregory Rosston, Andrzej Skrzypacz & Scott Wallsten, "Comments of 71 Concerned Economists: Using Procurement Auctions to Allocate Broadband Stimulus Grants," (April 13, 2009) (submitted to NTIA and Rural Utilities Service) (71 Economists' Proposal).

⁴³⁰ Pub. L. No. 110-385, 122 Stat. 4096 (codified at 47 U.S.C. §§ 1301-04).

⁴³¹ See *Broadband Data NPRM*, FCC 11-14, at paras. 49-65 (seeking comment on whether and how the Commission should collect deployment data).

⁴³² See *infra* paras. 297-298.

⁴³³ Debate exists about current and future satellite capacity. See, e.g., Letter from John P. Janka, Counsel for ViaSat, Inc. and WildBlue Communications, Inc., to Marlene Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket Nos. 05-337, 10-90, attachment at 2 (filed Nov. 2, 2010). Nevertheless, the capacity of publicly announced future launches could only serve all unserved areas at a much lower rate of data usage per subscriber than even current usage patterns suggests. See OBI, Broadband Availability Gap, at 90-92.

support, subject to certain limits, but not to allow satellite broadband providers to bid on their own.⁴³⁴ We seek comment on this proposal.

273. We propose to direct USAC to administer the CAF in accordance with the terms of its current appointment as Administrator and all existing Commission rules and orders applicable to the Administrator. We seek comment on whether there are any specific rules or orders currently applicable to USAC's administration of the Fund that should not apply to the CAF, and whether there are new or different requirements we should apply to USAC's administration of CAF support.

3. Size of Phase I CAF

274. We propose to dedicate a defined amount of money to fund the first phase of the CAF. As noted above, this new program would be a new support mechanism that would co-exist with our other, existing support mechanisms, and funds provided to an area through the CAF would not reduce existing support mechanisms in the same area. We seek comment on this proposal.

275. As we undertake reform, we remain committed to controlling the size of USF, and we expect the reforms we propose today will result in more efficient use of federal support. We seek comment on whether the Commission should set an overall budget for the CAF such that the sum of any annual commitments for the CAF and any existing high-cost programs (as modified) in 2012 would be no greater than projections for the current high-cost program, absent any rule changes. In the alternative, the budget for the CAF could be set at a smaller amount, allowing program savings to go to reducing the overall size of the Fund and contribution obligations on consumers. We seek comment on the appropriate size of the CAF. In light of the high costs that would be required to ensure ubiquitous mobile coverage and very-high-speed broadband for every American and the length of the transition to the proposed Connect America Fund, we also seek comment on whether additional investments in universal service may be needed to accelerate network deployment.

276. We propose to fund the CAF with savings that we expect to realize from our existing high-cost support programs. We are currently reclaiming high-cost support that Verizon Wireless and Sprint agreed to phase out consistent with earlier merger orders.⁴³⁵ We have proposed above to rationalize high-cost support provided to remaining competitive ETCs, as well as IAS support, beginning in 2012, with certain possible exceptions.⁴³⁶ In addition, we have proposed reforms to the other high-cost support mechanisms to promote efficiency and accountability, including the elimination of local switching support and a total limit on total support per line.⁴³⁷ Together, these reforms could generate close to a billion dollars in savings over the next few years, which could be made available to support broadband deployment through the CAF program without increasing the overall size of the high-cost portion of USF. We seek comment on whether directing such a defined amount of funding to the CAF more effectively serves our universal service goals than continuing to provide IAS and competitive ETC support under current program rules.

⁴³⁴ See *supra* para. 98; *infra* paras. 282, 424.

⁴³⁵ See *Corr Wireless Order*, 25 FCC Rcd at 12854; *Corr Wireless II Order*, 25 FCC Rcd at 18146.

⁴³⁶ See *supra* Sections VI.C, VI.D. The National Broadband Plan recommended that these funding streams be retargeted to broadband deployment. National Broadband Plan at 147-48. In the *USF Reform NOI/NPRM*, we proposed to transition CETC and IAS funding toward broadband. 25 FCC Rcd at 6680-82, paras. 57-58, 60-61. More recently, in the *Corr Wireless Order*, the Commission directed USAC to hold reclaimed funds from Verizon Wireless and Sprint in reserve for eighteen months to allow time for this Commission to complete rulemakings to implement various recommendations in the National Broadband Plan. *Corr Wireless Order*, 25 FCC Rcd 12682-83, paras. 20, 22. In October 2010, the Commission proposed to use a portion of those reclaimed funds to create a Mobility Fund. See *Mobility Fund NPRM*, 25 FCC Rcd at 14722, para. 13.

⁴³⁷ See *supra* Section VI.A.

277. If we transition high-cost support for IAS and competitive ETCs more rapidly, additional funding could be dedicated to the CAF program in 2012. Conversely, if we create exceptions for phasing down competitive ETC support, less funding would be available for the CAF. We seek comment on these alternatives in light of our national goals for universal service funding.

278. As discussed more fully below, we envision that we will hold an initial auction in 2012, and possibly a second auction in a subsequent year (e.g., in 2014), as more funding is reclaimed through our reforms. We seek comment on these proposals. If we only use a portion of the funding reclaimed for the CAF, we also could use some of the remaining funds to help offset proposed reductions in access charges and/or for other potential support mechanisms. We seek comment on how much, and under what conditions, such funds might be used for these alternative purposes or to reduce the USF contribution burden on consumers and businesses.⁴³⁸

279. In our initial auction in 2012, we could award funds that, by the time the auction closes and support is obligated, will have already been reclaimed as a result of the reforms identified above. Alternatively, we could auction off support based on the existing funds set aside combined with projected savings from these reforms that have not yet been realized (i.e., we would include amounts projected to be saved in 2013 and 2014 as well), with a specified amount obligated and paid out initially and the remainder obligated and paid out in subsequent years.⁴³⁹ We seek comment on these alternatives and on other ways we could size the CAF.

280. In addition, we seek comment on the appropriate size of the CAF in light of our intention to award support through an auction mechanism. To ensure the most efficient use of funds, we envision a support mechanism in which bidders compete for limited funds such that not all bids would be successful. How should we strike the balance in sizing the CAF to encourage a sufficient number of bidders to participate while achieving our other objectives?

4. One CAF Provider Per Unserved Area

281. Given our objective of extending broadband to unserved housing units in as efficient a manner as possible, we propose that only one entity in any given geographic area receive support in the first phase of the CAF. We seek comment on this proposal. In some instances, the current incumbent ETC may also be the winning bidder for CAF support. In others, another entity could win CAF support for deploying broadband in the unserved area, but the current incumbent would continue to receive support for its entire study area under existing support mechanisms as modified. What would be the impact on the incumbent ETC if another entity receives funding to overbuild a portion of the study area?

282. We propose that only one provider per area would receive CAF support during this initial phase of the CAF, but we also propose to allow the subsidized provider to partner with others to satisfy the public interest obligations associated with the CAF. For example, a wireline incumbent carrier in an area might partner with a satellite provider to leverage the wireline provider's existing network and to fill in the highest-cost areas with service provided by satellite. We seek comment on the benefits and risks of allowing such arrangements, and whether our proposal is consistent with the requirement of section 214(e)(1)(A) of the Act that an ETC provide supported services using its own facilities or a combination of its own facilities and resold facilities.⁴⁴⁰ We also seek comment on whether to impose limits on the percentage of housing units that could be served by such arrangements.

⁴³⁸ See *infra* Section XIV.

⁴³⁹ See *infra* paras. 361-362.

⁴⁴⁰ See 47 U.S.C. § 214(e)(1)(A). While we propose to require support recipients to be designated as ETCs, we seek comment on whether we should forbear from imposing such a requirement. See *infra* para. 318.

283. We acknowledge that wireless providers have expressed competitive concerns about the possibility of limiting support to one provider per area.⁴⁴¹ That is, because different service providers may use incompatible technologies, only certain carriers—those using a compatible technology—would have the capability of permitting their own customers to roam onto the supported network (which would be the only network) in that area. In the *Mobility Fund NPRM*, we sought comment on whether we should impose terms and conditions of support in light of this concern.⁴⁴² Should we consider similar terms and conditions for the first phase of the CAF program?⁴⁴³ Are there similar terms and conditions that we should consider for other types of providers? In light of the advance of technology, is such a concern likely to still be an issue by the time facilities funded through this program are deployed?

5. Auction to Determine Awards of Support

284. We propose to use auctions to determine the entities that will receive support and the amount of support they will receive. Specifically, we propose to award a fixed amount of support, paid out in installments, based on the lowest bid amounts submitted in a reverse auction, as we discuss in more detail below. Such a mechanism should allow the market to identify the lowest level of public support needed to deploy broadband in areas unserved by broadband today.⁴⁴⁴ It will also allow us to select providers without regard to the type of technology used by such providers, consistent with our goal of being technology-neutral.

285. In this proposed reverse auction, bidders would evaluate the amount of support they need to provide the specified services. In general, bidders would not want to overstate the support they require because they would be competing against other providers for limited support funds and a higher bid would reduce their chances of winning. At the same time, they would not want to understate the support they require because, if they win the auction, they will be required to meet their public interest obligations with only that level of support.⁴⁴⁵ As a result, the submitted bids should represent a good estimate of the support needed to offer service to the areas covered by the bid. We seek comment generally on the use of a competitive process to determine recipients of support and support amounts, and on the auction format. We also seek comment on how we might structure the design of CAF to minimize barriers to participation for entities that may wish to prequalify for loans, either from governmental agencies or private sources, to complete a proposed buildout.

286. We propose to determine winning bidders to maximize the extension of broadband deployment in areas lacking service that provides a download speed of 768 kbps or better. If no bids cover the same geographic area, selecting winning bids would be straightforward. All bids, across all areas, would be compared against all other bids, and would be ordered from lowest-price-per-unit bid to

⁴⁴¹ See Comments of U.S. Cellular, WC Docket No. 10-90, GN Docket No. 09-51, at 12-18 (filed July 12, 2010); Comments of Rural Cellular Association, WC Docket No. 10-90, GN Docket No. 09-51, at 16-17 (filed July 12, 2010); Comments of USA Coalition, WC Docket No. 10-90, GN Docket No. 09-51, at 34-40 (filed July 12, 2010); Comments of Sprint Nextel, WC Docket No. 10-90, GN Docket No. 09-51, at 5-11 (filed July 12, 2010); Reply Comments of SouthernLINC, WC Docket No. 10-90, GN Docket No. 09-51, at 22-24 (filed Aug. 11, 2010).

⁴⁴² *Mobility Fund NPRM*, 25 FCC Rcd at 14723–24, paras. 15–19.

⁴⁴³ Cf. *supra* para. 148.

⁴⁴⁴ As noted above in the Legal Authority section, we could potentially allow ETCs not to provide all supported services, and therefore allow ETCs to provide only broadband service. On the other hand, if we were to condition receipt of support for the provision of voice service on the deployment of broadband, a participant in the CAF would have to provide voice as well as broadband service.

⁴⁴⁵ Bidders would have significant incentives to fulfill their obligations. We propose that recipients of funding be required to obtain a letter of credit that would be forfeited if they fail to meet their obligations, and we propose to verify, through field testing, that they have actually done so. See *infra* paras. 356–360, 370.

highest.⁴⁴⁶ If, as discussed in more detail below, we decide to adjust bids to account for bidders' commitments to exceed our minimum performance requirements (e.g., bidders offering greater bandwidth, or lower latency), we would adjust the per-unit bid by a pre-defined amount before ranking them. Support would be allocated first to the bidder making the lowest (adjusted) per-unit bid, and then to bidders with the next lowest per-unit bids in turn, until the running sum of support funds for the winning bidders exhausted the money available in the CAF.

287. On the other hand, if more than one bid covers the same unserved geographic area, the method for selecting winning bids may be more complex, given our proposed objective of maximizing the deployment of broadband to housing units given the available funds. We seek comment below on possible auction approaches that might be used to achieve this objective. We also seek comment on our proposal to allocate support by comparing all bids across all areas, rather than just comparing those within certain subsets of otherwise eligible geographic areas.

288. Although we propose to use a reverse auction approach to awarding support in the first phase of the CAF, we note that some commenters have suggested, as an alternative, that we use a competitive application approach in which we solicit confidential proposals which we (or another entity, such as USAC) would evaluate using a number of weighted criteria.⁴⁴⁷ For example, the Commission could use a process similar to those used for the Broadband Technology Opportunities Program and the Broadband Initiatives Program established pursuant to the American Recovery and Reinvestment Act of 2009.⁴⁴⁸ We seek comment on using such an approach as an alternative to the reverse auction design described herein.

6. Identifying Unserved Areas Eligible for Support

289. We propose to identify unserved areas on a census block basis and to offer support for deployment of broadband to bidder-defined service areas, which could be individual census blocks or aggregations of census blocks. We seek comment on alternative ways to distribute support to these unserved areas.

290. *Identifying Unserved Areas by Census Block.* As a first step in identifying those areas for which applicants can bid for support, we propose to determine the deployment of broadband service at the census block level. Census blocks are the smallest geographic unit for which the Census Bureau collects and tabulates decennial census data, so determining coverage by census block should provide a detailed picture of the deployment of broadband service. We propose to use either official census data and/or a widely used commercial data source, such as the Geolytics Block Estimates and Block Estimates Professional databases, to identify census block boundaries and for demographic data, depending on whether data are publicly available that will meet our needs. We seek comment on this proposal.

⁴⁴⁶ If we choose to weight bids to account for various additional factors, such as promised speeds or latency, we would compare weighted bids. See *infra* paras. 338-341.

⁴⁴⁷ See Comments of AT&T, WC Docket No. 10-90, GN Docket No. 09-51, at 5-12 (filed July 12, 2010) (proposing that the Commission use a competitive application process to award support in several iterations as funds become available); Comments of Verizon and Verizon Wireless, WC Docket No. 10-90, GN Docket No. 09-51, at 33 (filed July 12, 2010) (encouraging the Commission to use a grant-based program to distribute funds). But see Reply Comments of National Association of State Utility Consumer Advocates, WC Docket No. 10-90, GN Docket No. 09-51, at 33-34 (filed Aug. 11, 2010) (claiming that AT&T's proposal would not do enough to spur competition).

⁴⁴⁸ The Rural Utilities Service, Department of Agriculture, established the Broadband Initiatives Program and the National Telecommunications and Information Administration, Department of Commerce, established the Broadband Technology Opportunities Program pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115. See Department of Agriculture, Rural Utilities Service, Broadband Initiatives Program; Department of Commerce, National Telecommunications and Information Administration, Notice of Funds Availability (NOFA) and Solicitation of Applications, 75 Fed. Reg. 3792 (Jan. 22, 2010).

291. The use of census blocks should also facilitate the use of NTIA's nationwide broadband map to identify areas eligible for funding.⁴⁴⁹ We propose to define unserved areas based on the data collection initiated by the Broadband Data Improvement Act and funded through the State Broadband Data and Development Grant Program (SBDD); the first data from that effort are due to be made public by February 17, 2011.⁴⁵⁰ We seek comment on how we should define served and unserved areas using that data; we ask commenters to examine the National Broadband Map once it becomes available and to provide comment on how we can best use the data available, consistent with our goals. What criteria should we use to determine whether an area should be considered "unserved" for purposes of the first phase of the CAF? Should it be the same as any criteria used in the NTIA map? How should we account for potential limitations in the data? We recognize that, while data are first due to be made available in February 2011, NTIA's data collection is ongoing and so we propose using the most recent data available at the time of our auction. In the alternative, should we rely on Commission data obtained from an updated Form 477? How should we define served and unserved census blocks using these alternative data? We seek comment on these possible methods of identifying unserved census blocks and whether any workable alternatives would be more appropriate in connection with the first phase of the CAF.

292. We note that NTIA data, on which we propose to rely, may not be completely accurate because NTIA does not require broadband providers to report their coverage as part of the SBDD program. We seek comment on whether there is something more that the Commission should do to encourage states, territories, and Tribal governments to verify that areas for which there is no reported broadband service are, in fact, unserved. Are there other ways we could ensure that an area reported as unserved is actually unserved? We also seek comment on whether the value of such verification outweighs its cost, given that providers will have an incentive to report their coverage if the failure to report means that a potential competitor could receive a federal subsidy to deploy broadband to that same area. Does this incentive mean we should be more concerned about overstatement of coverage rather than understatement of coverage? If so, how should we address such concerns?

293. *Offering Support by Census Blocks.* We propose that the geographic areas for auction should be based on small common building blocks such as census blocks, which bidders could aggregate together as part of a package bid to cover larger areas. Although we propose to identify unserved areas at the census block level using the method described above, we propose to allow bidders to bid on multiple census blocks at auction. Winning bidders would then be awarded support in one or more census blocks.

294. We seek comment on whether census blocks are the most appropriate basic geographic unit (which would be subject to aggregation by bidders) for awarding support to expand coverage, or whether there are other basic geographic units that might better balance the need to identify discrete unserved areas for which we propose to require coverage with business plan requirements of the different types of providers that may seek to participate in the first phase of the CAF.⁴⁵¹ Are census blocks the most appropriate basic geographic unit for us to use in relation to support for deployment on Tribal lands, or would some other basic geographic unit better serve our purposes?

⁴⁴⁹ Comments of National Cable & Telecommunications Association, WC Docket No. 10-90, GN Docket No. 09-51, at 18 (filed July 12, 2010).

⁴⁵⁰ See Department of Commerce, National Telecommunications and Information Administration, State Broadband Data and Development Grant Program, Docket No. 0660-ZA29, Notice of Funds Availability, 74 Fed. Reg. 32545, 32547 (July 8, 2009) (*NTIA State Mapping NOFA*). NTIA defines "broadband" for the purposes of the National Broadband Map to be two-way data transmission to and from the Internet with advertised speeds of at least 768 kbps downstream and 200 kbps upstream. *Id.* at 32548.

⁴⁵¹ We recognize that, as with any networked service, the benefits of expanding the availability of service accrue not only to the additional population reached by the expansion but also to the population already covered. Because there may be both commercial and public interest benefits in expanding service into areas in which the resident covered population is relatively low, we are not proposing to set an absolute minimum resident population for an area to receive support.

295. *Establishing Unserved Units.* We propose to use unserved housing units, identified as described above, to establish a baseline number of unserved units in each census block identified as unserved. We also seek comment on whether we should further consider unserved businesses or community anchor institutions such as schools, libraries, other government buildings, health care facilities, job centers, or recreation sites in determining the number of unserved units in each census block to be used for assigning support. Would using such additional factors in determining the unserved units in each area better represent the public benefits of providing new access to broadband service? Are there additional or different types of anchor institutions in Tribal lands that should be considered in such an analysis? We ask that commenters address how we should measure the factors we propose as well as any other factors they advocate, and how coverage for one type of unit, such as a work site, should compare with coverage for other units, such as housing units. We also seek comment on how we would obtain the necessary data to be able to determine with a sufficient level of accuracy the number of businesses and other institutions in a given area.

296. *Leveraging Support through Cooperation with States.*⁴⁵² We seek comment on whether and how the Commission could use CAF support to create incentives for states to take action that will advance our mutual goals.

297. The intercarrier compensation section below seeks comment on how to provide states with incentives to reform intrastate switched access rates.⁴⁵³ We could, for example, limit support in the first phase of the CAF program to states that have taken or are taking measures to reduce intrastate switched access rates. Would limiting the program to states that have undertaken access charge reform provide sufficient incentive for them to do so? We seek comment below on the appropriate criteria for determining whether a state has taken sufficient action to reform intrastate intercarrier compensation rates so as to be eligible to participate in the program, if we were to adopt such a limitation. Alternatively, rather than limiting support only to those states that have undertaken such reforms, should we consider providing a bidding credit to bidders who propose to deploy in states that have taken action? We also seek comment on whether Tribal lands should be eligible for support irrespective of the actions of the states in which they are located to reform access charges.

298. We note that a number of states have assumed a role in preserving and advancing universal service by creating high-cost programs similar to the federal high-cost program,⁴⁵⁴ and some states have undertaken efforts to promote broadband.⁴⁵⁵ We seek comment on whether and how to prioritize support in the first phase of the CAF to states that have created such programs or that complete such actions by a predefined date (such as the date bids are due).⁴⁵⁶ To the extent we create such a

⁴⁵² The Act defines the term "State" to include territories and possessions. 47 U.S.C. § 153 (47).

⁴⁵³ See *infra* paras. 544-549.

⁴⁵⁴ See Peter Bluhm, Phyllis Bernt & Jing Liu, *State High Cost Funds: Purposes, Design, and Evaluation*, 2-3 (NRRRI January 2010) (Bluhm Paper). According to the Bluhm Paper, the following states have high cost funds: Alaska, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Kansas, Maine, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Utah, Wisconsin and Wyoming.

⁴⁵⁵ Not all of these programs are administered by the state public utility commission. See Bluhm Paper at 32. Examples of funding programs to support the build-out of advanced networks in unserved and underserved areas include the California Advanced Services Fund, ConnectME Authority, Illinois Technology Revolving Loan Program, Idaho Rural Broadband Investment Program (IRBIP), Louisiana Delta Development Initiative, and Massachusetts Broadband Initiative. See Alliance for Pub. Tech. & Commc'ns Workers of Am., *State Broadband Initiatives 3*, 47-49 (2009), available at http://www.thebroadbandresourcecenter.org/apt/publications/reports-studies/state_broadband_initiatives.pdf.

⁴⁵⁶ See, e.g., Joint Comments of Nebraska Public Service Commission and North Dakota Public Service Commission, WC Docket No. 10-90, GN Docket No. 09-51, at 15 (filed July 12, 2010) (advocating that the Commission create explicit support incentives to encourage states to take action to support universal service).

preference or priority, we propose that states that have created broadband deployment support mechanisms using state funds would be eligible, regardless of whether they have created high-cost funds.⁴⁵⁷ We seek comment on whether all states and territories with broadband support programs should receive priority, or whether only states and territories that provide a certain amount of support through their programs should be included. If we provide some form of preference for support to only states that have programs meeting a certain threshold, how should we determine what that threshold should be? Should it be a defined dollar amount, an amount per housing unit (or person), or an amount of support per housing unit unserved by broadband (or per person residing in an unserved housing unit)? What should the amount be? Also, how should we take account of the significant variation in the design of such programs across the country?⁴⁵⁸ Should Tribal lands, as federal enclaves, be eligible for support irrespective of the actions of the states in which they are located?

299. We also note that many municipalities have taken an active role in supporting the deployment of broadband. If we establish a priority or preference for funding for states that have taken a more active role in supporting broadband or have established a high-cost program, should our rules also take into account these municipalities' efforts? Should our rules take into account whether states have restricted municipalities from funding or deploying broadband networks? If our rules should take these considerations into account, how should they do so? We seek comment on these issues.

300. Alternatively, we could treat equally all areas in the country, including territories, that we determine to be unserved. We seek comment on this alternative proposal.

301. We invite comment on all of the above alternatives—distributing support among unserved areas nationwide and prioritizing support to a subset of unserved areas. Under either approach, are there other measures the Commission should take to ensure an equitable distribution of support, and if so, what would constitute an equitable distribution? Are there others ways to prioritize support to a subset of unserved areas that we should consider? We seek comment on the relative merits and drawbacks of these alternative approaches.

302. *Tribal Areas.* We seek comment on whether we should reserve a defined amount of funds in the first phase of the CAF to award to bidders that will deploy broadband on Tribal lands that are unserved.⁴⁵⁹ In the *USF Reform NOI/NPRM*, we sought comment generally on whether unique circumstances on Tribal lands warrant a different approach to high-cost support for broadband service.⁴⁶⁰ Several commenters asserted that a different approach was appropriate for Tribal lands.⁴⁶¹

⁴⁵⁷ This would include, for instance, state broadband programs financed by state bonds or special authorities.

⁴⁵⁸ For instance, some states have created high cost funds to replace revenues lost as a result of intrastate access charge reductions, while others have created funds to address changes in regulatory rules. Some states limit the amount of support provided by establishing benchmark rates for local service. There is variation among the states in whether support is determined based on forward-looking costs or embedded costs. In some states, carriers provide explicit bill credits for customers who otherwise would pay retail rates above a specified benchmark, with the fund reimbursing carriers for such bill credits. *See generally* Bluhm Paper.

⁴⁵⁹ *See supra* note 4.

⁴⁶⁰ *USF Reform NOI/NPRM*, 25 FCC Rcd at 6677, para. 50.

⁴⁶¹ *See, e.g.*, Comments of Cheyenne River Sioux Tribe Telephone Authority, WC Docket No. 10-90, GN Docket No. 09-51, at 4-7 (filed July 12, 2010); Comments of Navajo Nation Telecommunications Regulatory Commission, WC Docket No. 10-90, GN Docket No. 09-51, at 3-6 (filed July 12, 2010); Joint Comments of Native Public Media and the National Congress of American Indians, WC Docket No. 10-90, GN Docket No. 09-51, at 3-6 (filed July 12, 2010).